

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

NAOMI GONZALES,

Plaintiff,

-against-

AGWAY ENERGY SERVICES, LLC,

Defendant.

Case No. 5:18-cv-00235-MAD-ATB

**DECLARATION OF TODD S. GARBER
IN SUPPORT OF PLAINTIFF'S MOTION TO SUBSTITUTE**

I, Todd S. Garber, declare pursuant to 28 U.S.C. § 1746 under penalty of perjury that the following are true and correct:

1. I am a partner in the law firm of Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and counsel for Plaintiff in the above-captioned action. I respectfully submit this Declaration in Support of Plaintiff's Motion to Substitute.

2. On January 25, 2021, movant Antonio Martinez petitioned the Orange County Surrogate's Court for appointment as the administrator of his mother's estate. Mr. Martinez submitted all of the requisite documentation necessary to be appointed as executor, including executed waivers and consent in support of his appointment by all of Ms. Gonzales' other children and heirs.

3. Ms. Gonzales died intestate. Neither Mr. Martinez nor any of Ms. Gonzales' other heirs initiated formal estate proceedings on behalf of Ms. Gonzales prior to Mr. Martinez's decision to substitute her in this action because Ms. Gonzales did not own any assets

necessitating probate. Notwithstanding, in order to ensure the continuation of this action (which was a matter of great importance to Ms. Gonzales), Mr. Martinez initiated the probate process.

4. The Surrogate's Court clerk accepted the application and assigned it a file number of 2021-74. Ms. Gonzales' other children and heirs have consented to Mr. Martinez's appointment and have all signed waivers and consent in support of his appointment. The Surrogate's Court granted Mr. Martinez's application for appointment as the administrator of his mother's estate on February 3, 2021.

5. Attached as Exhibit 1 is a true and correct copy of the letters of administration, decision, and decree Antonio Martinez received from the Orange County Surrogate's Court on February 3, 2021, appointing him as executor of Naomi Gonzales' estate.

6. Attached as Exhibit 2 is a true and correct copy of Judge Briccetti Order and Judgment granting final approval of the settlement agreement in *Adler v. Bank of America, N.A.*, No. 13-4866 (July 20, 2016), ECF No. 119.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 3, 2021 in White Plains, New York.

**FINKELSTEIN, BLANKINSHIP,
FREI-PEARSON & GARBER, LLP**

By: s/ Todd S. Garber
Todd S. Garber